



## U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

October 6, 2022

**By ECF**

The Honorable Victor Marrero  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

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Re: *United States Court Security Officers, et al., v. United States Marshals Service*,  
22 Civ. 1380 (VM)

Dear Judge Marrero:

This Office represents defendant United States Marshals Service (“USMS” or the “Government”), in the above-referenced Administrative Procedure Act (“APA”) and Freedom of Information Act (“FOIA”) case commenced by plaintiffs, who are individual court security officers who work at various federal courthouses within New York State, and the labor union that represents them. We write respectfully to request that the Court suspend the current deadlines for the Government’s partial motion to dismiss plaintiffs’ APA claim [ECF Nos. 16, 18], to allow the parties to determine whether plaintiffs’ remaining FOIA claim will be litigated before the Court, or if plaintiffs will agree to dismiss that claim pursuant to Fed. R. Civ. P. 41. This is the Government’s first request to hold the current briefing deadlines in abeyance. Plaintiffs’ counsel consents to the request.

As the Court is aware, plaintiffs’ APA claim (Count I) is based on their assertion that USMS allegedly refused or failed to make CARES Act funding available to certain court security officers, which plaintiffs contend was arbitrary and capricious in violation of the APA, 5 U.S.C. § 706(2). Plaintiffs’ FOIA claim (Count II) is based on their April 13, 2021 FOIA request to USMS, which sought agency records relating to the agency’s distribution of CARES Act funding. Plaintiffs alleged that USMS failed to timely and properly respond to that FOIA request as of the filing of their complaint. As of August 30, 2022, USMS has produced non-exempt portions of records responsive to the FOIA request after a reasonable search, and has represented to plaintiffs its belief that the agency has fulfilled its obligations under FOIA. On September 30, 2022, counsel for the Government contacted plaintiffs’ counsel to confirm whether plaintiffs are willing to dismiss their FOIA claim or intend to challenge any aspect of the Government’s FOIA response in litigation. Plaintiffs’ counsel is in the process of ascertaining plaintiffs’ position.

Should the Court grant the Government’s request to hold the current deadlines in abeyance, the parties propose submitting a status letter no later than **Wednesday, October 12**, to inform the Court whether plaintiffs intend to litigate their FOIA claim through cross-motions for summary judgment (in combination with the Government’s anticipated partial motion to dismiss the APA claim), or will voluntarily dismiss their FOIA claim. Should plaintiffs seek to litigate their FOIA claim, the status letter will also propose a deadline for the Government to file a pre-

motion letter concerning the FOIA claim in accordance with Section II.A of the Court's Individual Practices, with the aim of briefing dispositive motions on both the APA and the FOIA claims together, rather than piecemeal. Alternatively, if plaintiffs agree to voluntarily dismiss their FOIA claim, the proposed status letter will instead propose a new briefing schedule for the Government's partial motion to dismiss the APA claim.


We thank the Court for its consideration of this request.

Respectfully,

DAMIAN WILLIAMS  
United States Attorney

/s/ Tomoko Onozawa  
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cc: All Counsel of Record (via ECF)

<b>Request GRANTED.</b>	The parties' request hold the current deadlines in abeyance is granted. The parties are directed to file a status report by October 12, 2022, informing the Court how they plan to proceed and proposing a schedule, as needed.
<b>SO ORDERED.</b>	
<div>10/7/2022</div> <div>DATE</div>	 VICTOR MARRERO, U.S.D.J.